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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/778,470	02/07/2001	Cheree L. B. Stevens	ADV12 P300A	4695

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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	**PAPER NUMBER**
1761	

DATE MAILED: 10/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/778,470	STEVENS ET AL.	
	Examiner	Art Unit	
	Lien T. Tran	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *24 July 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *49-81 and 83-111* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *49-81, 83-111* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Claims 49-51, 53-57, 61-63, 78-81, 83-85, 88-94, 101-103, 111 are rejected under 35 U.S.C. 102(b) as being anticipated by Baur et al (WO 94/21143).

Baur et al disclose a coating composition comprising wheat flour, modified corn starch or modified potato-based starch, rice or corn flour, dextrin, gum, leavening agent and calcium salts. The amount of wheat flour is from about 5-50%. The amount of corn or potato starch is in the range of 5-50%. The rice or corn flour is used in the range of 2-50%. Dextrin is used in amount of about 2-20%. Leavening agents are used in amount of .1-2.5 for sodium bicarbonate and .1-3.5% for leavening acids such as sodium acid pyrophosphate. Calcium sat is used in amount of .1-1.5%. Gum, such as xanthan gum or methylcellulose, is used in amount of .1-5%. The dextrin used includes corn dextrin, rice dextrin or a tapioca dextrin. The composition also includes about 2-20% protein such as whey protein. The composition can be used in any food substrate which can be coated and frozen or coated, cooked, frozen or chilled and subsequently reheated or fully cooked by frying, baking or microwaving. The potential substrates include vegetables such as potato. After the substrate is coated, it may be chilled, frozen or par or fully cooked. The dry mixture of the components of the composition are mixed with water in the weight ration of 10 parts solids to 7-20 parts water. As an alternative procedure, the dry mixture of components can be applied in dry form to a moist substrate surface. The coated French fries product exhibit similar textural properties as before exposure to the lamp after standing form 15-30 minutes under standard restaurant infrared heating lamps. (page 3, table 1, page 5 lines 6-35, page 6 lines 8-20, page 8 , page 9 lines 6-26 and the examples)

Baur et al disclose all the limitations of the cited claims. Since the composition include modified potato starch or corn starch, rice flour or corn flour, Baur et al disclose embodiment in which the composition includes modified potato starch and rice flour. The amounts of rice flour and dextrin falls with the ranges claimed; thus, the ratio also falls within the ranges claimed.

Claims 52,58-60,64-77,80,86-87,95-100,104-110 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baur et al.

Baur et al do not disclose the potato starch is modified ungelatinized low-amylose content potato starch, the dextrin is low soluble or high soluble, adding sugar, conditioning the substrate, the type of rice flour as claimed, holding the substrate and then reheating, the means of holding as in claims 105-106, finish cooking after coating without freezing.

In absence of showing of criticality of unexpected result, it would have been obvious to one skilled in the art to select any type of potato starch. Raw potato starch is well known in the art and it would have been obvious to one skilled in the to select it as the source of potato starch. Potato starch is not high in amylose content and the claims do not define what will constitute low amylose. It would have been obvious to one skilled in the art to add sugar when desiring to sweeten the composition; the amount used depends on the degree of sweetness desired and would have been obvious to one skilled in the art. It would have been obvious to choose the solubility of the dextrin depending on the type of coating mix. For example, if a slurry is made, it would have been obvious to choose high solubility dextrin so that it can dissolve quickly or if a dry

mix is made, it would have been obvious to choose low solubility dextrin so that it is not affected easily by moisture. It would have been obvious to blanch the substrate in water when the food is potato because it is a common step in preparing potato product. It would have been obvious to freeze or not freeze the product depending the time of consumption of the product after it is coated. If the product will be consumed in a short time after coating, then it is obvious freezing is not needed. It would have been obvious to freeze the product without parfrying when uncooked product is wanted. It would have been obvious to hold the coated food for any amount of time depending on the time of consumption. It would have been obvious to hold the food at ambient temperature or under heat depending on the temperature wanted in the product. If it is desired for the food not to be hot, it would have been obvious to hold it under ambient temperature or vice versa. It would have been obvious to use any type of rice flour depending on the taste and flavor desired. This would have been a matter of preference.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 49-81, 83-111 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1,3,4-5,10-37,40-56, 69-70 of copending Application No. 10/170964. Although the conflicting claims are not identical, they are not patentably distinct from each other because both the instant application and the co-pending application is directed to coating compositions comprising rice flour, dextrin and modified potato starch. The difference resides in the types of food substrates that the coating compositions are used in. However, such difference is not patentably distinct because it would have been obvious to one skilled in the art to use the coating composition on the food substrates claimed in the co-pending application to obtain the benefits provided by the coating compositions. It would also have been obvious to add wheat flour when desiring to adjust the viscosity and texture of the composition. It would have been obvious to add emulsifier to aid in dispersing the slurry. The additive is well known in the art to be used for such purpose.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

In the response filed 7/24/06, applicant argues Baur et al do not anticipate the claims because the claimed subject matter must be disclose in the reference with sufficient specificity to constitute an anticipation. Applicant states the reference does

not indicate with sufficient specificity the critical ratio of rice component to dextrin component. This argument is not persuasive. The reference specifically teaches that the amount of rice flour is from 2 to 25% or 5-50 and the amount of dextrin is 2-20; thus the combined amount of dextrin and rice flour can be 4-45 in one embodiment and 7-70 in another embodiment. Both the end points of the two embodiments are within the range claimed and the points in between the two ends are within the range claimed. If the amounts are the same, then, it is inherent the ratio also is the same. For example, if the rice component is 10% and the dextrin is 20%, then the ratio is 1:2 and the combined amount is 30; both falls within the ranges claimed. Applicant further argues any of the extraordinary number of combinations of corn starch alone or potato starch within this range are outside the claimed composition which free of corn starch component. The basis of this argument is not understood because Baur et al specifically teach modified corn or potato starch is used. Thus, composition containing only potato starch is an embodiment disclosed by Baur et al. The fact that Baur et al discloses other embodiment is not an issue as long as they disclose embodiment which meets the claimed limitations.

With respect to the 103 rejection, applicant states that a 132 declaration is filed to show unexpected result with respect to the ration of rice/dextrin. The declaration has been considered but is not deemed sufficient to overcome the rejection because unexpected result cannot be used to overcome a 102 rejection. All claims rejected under 102 are not concerned with the ratio of rice/dextrin. While it is true that obviousness rejection based on overlapping ranges can be overcome by showing the

criticality of the claimed range, this is not the case in the instant situation because the claims containing the ratio limitation are rejected under 102 not obviousness rejection. The amounts of dextrin and rice flour disclosed are either the same as the amount claimed or fall within the range claimed.

Applicant's arguments filed 7/24/06 have been fully considered but they are not persuasive.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wednesday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 28, 2006

Lien Tran

LIEN TRAN
PRIMARY EXAMINER
Group 1700